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Legal Department File No. O. Indus Relations/52

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Clause 5 of the agreement between the Millowners' Association and the Rashtriya Mill Mazdoor Sangh provides that any Mill desiring retrenchment under the terms of this agreement shall give a notice of change to the Rashtriya Mill Mazdoor Sangh, Representative Union, under section 42 of the Bombay Industrial Relations Act, 1947, and thereupon, the Rashtriya Mill Mazdoor Sangh will enter into an agreement with the Mill within a period of not more than 14 days; and that if no agreement be reached within the said period of 14 days, the parties should follow the provisions of the Bombay Industrial Relations Act, but the scale of compensation to be paid shall be as prescribed in this agreement Clause 3 of the Annexure of the so-called notice definitely contemplates retrenchment, and, therefore, clause 5 of the agreement will be attracted Clause 5 requires a Mill and not the Millowners' Association to give notice, although the agreement was between the Millowners' Association and the Rashtriya Mill Mazdoor Sangh. In terms of the agreement, therefore, it will be incumbent upon the Mill to give notice to the Rashtriya Mill Mazdoor Sangh.

2 The notice is to be given under section 42. Section 42(1) of the Bombay Industrial Relations Act, 1947, provides that "any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of the employees. ..... He shall also affix a copy of

such notice at a conspicuous place on the premises where the employees affected by the change are employed for work". The proposed change undoubtedly relates to an industrial matter inasmuch as it will be referable to rationalisation(item 4), and also to reduction intended to be of a permanent of semi-permanent character in the number of persons employed (item 1). Section 42(1) is thus attracted even independently of the agreement. The provisions of section 42(1) contemplate that the notice must be a notice of an intended change. The notice in this case is not a notice of that kind, because the Annexure to the notice leaves it to the discretion of an individual member-Mill whether to introduce, extend or adapt four looms to a weaver system in its Weaving Department fully or partially, as the case may be, on certain conditions, which means that the change is not intended but is contingent upon the conditions, circumstances and the plans of each Mill to whom an option has been given . This is re-inforced by the recital in clause 1 of the Annexure that a further intimation of 15days has to be given to the Rashtriya Mill Mazdoor Sangh by a member-Mill. The notice contemplated by section 42(1) is a notice of present intention to effect a change and not of a contingent intention depending upon the option of an employer who is a member of an Association which may otherwise be included in the definition of an employer as given in clause (14) of section 3. Moreover, it must be pointed out that section 42 also requires the employer to fix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are are employed for work. It may be feasible for an Association toaffix the copy at the establishment of each member where the

employees work. But because the question has been left to the discretion of each member, and there is no knowing when and how the member will implement the intention that this part of the mandatory provisions of section 42(1) cannot also be carried out; and that would be one further reason for not treating the notice as a valid notice.

2 For all these reasons the notice cannot be treated as a valid notice.

(f.c. signed by R.L.A.)

Remembrancer of Legal Affairs.

U.R. to Labour & Housing Deptt. No. 6239, dated 24-4-1952.

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Sub-section (4) of section 2 of the Bombay Industrial Relations Act, 1946, provides that the State Government may by notification in the Official Gazette apply all or any of the provisions of this Act to all or any other industries, whether generally or in any local area, as may be specified in such notification. Therefore, the notification must specify the industry, and once such industry is specified, it is open to Government to apply all the provisions of the Act or only some provisions tothat industry. "Industry" has been defined in clause (19) of section 3 as follows;

"(19 'industry' means-

(a) any business, trade, manufacture or undertaking or calling of employers;

(b) any calling, service, employment, handcraft, or industrial occupation or association of employees, and includes-

(i) agriculture and agricultural operations;

(ii) any branch of an industry or groups of industries which the State of Government may by notification in the Official Gazette declare to be an industry for the purpose of this Act"

This definitio shows that it is permissible to select a branch of an industry and to notify it as a separate industry by itself. It is also permissible to treat even agriculture and an agricultural operation as an industry. But for the inclusive definition this letter would not have been normally possible, as agriculture and agricultural operations could not be normally included in the word "industry". Therefore, in

a case where an industry consists of industri
al operations and agricultural operations as
two separate branches, it is permissible(1)
to notify the entire vertical combination as
an industry,(2) to select each branch of that
vertical combination and to notify it is a
separate industry. The first course was
followed in the initial Notification(No.
2246/46 dated 8.1.1948). The second course
was followed in the notification supplied wit
R.L.A.'s No. 20376 dated 21.12.1951, where
each branch was treated as a separate industry.
The Commissioner of Labour feels that this
course is likely to create complications in
respect of representative unions etc.
Whatever those complications may be, it is
not permissible under the Act to treat the
vertical combination as an integrated industry
and then to select each branch thereof for
different treatment by applying different
provisions of the Act to such branch. The
notification last supplied cannot, therefore,
be amended to meet the difficulties pointed
out by the Commissioner of Labour by treating
the agricultural operations as a separate
branch of an industry and not as a branch
treated as a separate industry.

Id./P.M.L. 22/5

Remembrancer of Legal Affairs.

U.O. to Labour & Housing Deptt. No. 8609, date
22nd May 1952.

SMR 16-6-56
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Attention is invited to the provisions of section 119B of the Bombay Industrial Relations Act, 1946. The power to move for contempt vests in the Wage Board itself and if the Board feels that the offence of contempt has been committed against it, the Board can record the facts constituting such contempt and make a report in that behalf to the Industrial Court; and thereupon the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court. It would, therefore, follow that there is no scope for Government taking any action in the matter excepting to bring the leaflet to the notice of the Wage Board, if it has not already been brought to its notice.

2 On the questin whether the leaflet amounts to contempt, it must be observed that it is a well recognised principle that a judgment can be criticised in strong, perhaps, even extravagant language, but what is held as contempt is ascribing the decision to improper motives as distringuished from error; (see In the matter of Muslim Outlook, A.I.R.(1927) Lah. 610 at p. 612; In re.K.L.Gauba, Barrister-at-law, Lahore, I,L.R. (1942) Lah.105). The offending portions of the leaflet are;

(1) the caption where it is said that "the Wage Board cut the throats of silk workers and "Raise a voice of protest against the Wage Board's decision which is favourable to the employers";

(ii) in the text of the leaflet where it is said-

(a) "What solicitude has the Board shown for the employers' interests",

(b) "the Wage Board has murdered the acknowledged principles of justice",

(c)"drayer and rancher workers, the 'inner voice' of the Wage Board says, put out your eyes, bend your backbone and eventually die of T.B."

These are no doubt recitals couched in very intemperate language. But the object of the leaflet is to invite the workers to approach the Industrial Court in appeal. The object is, therefore, constitutional; and the tenor must be judged from the object to a certain extent. Having regard to the common vocabulary of labour agitators, the objects of the leaflet and its general tenor, it would be difficult to construe the offending recitals as unmistakably imputing improper motives to the Wage Board or to ascribe to them the deliberate intention of undermining confidence in or creating disrespect for the Wage Board in the mind of the workers. However, that is a matter which must be left to the judgment of the Wage Board itself.

Id./P.M.L. 8/8

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U.R. to Labour & Housing Dept'. No. 13091, dated 8th August 1952.

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Industrial dispute compensation for closure.

Bombay Industrial Relations Act, 1946. S. 40(2) & section 73.

Attention is invited to the case of Digamber Ramchandra V. Khandesh Mills (52 Bom. L.R. 46) where sub-section (8) of section 26 of the Bombay Industrial Disputes Act, 1938, was construed. Sub-section (1) of section 40 of the Bombay Industrail Relations Act, 1946, in substance corresponds to that provision; and the question which, therefore, arises is whether there is any provision in the Bombay Industrial Relations Act, 1946, which can be availed of for getting rid of the effect of that decision. The two provisions which are so available are (i) sub-section (2) of section 40 and (ii) section 73, both of which are new, and did not figure in the Bombay Industrial Disputes Act 1938.

Considering first the effect of sub section (2) of section 40, it is to be observed that the sub-section provides that notwithstanding anything contained in sub-section (1) the Provincial Government may refer..... any dispute of the nature referred to in clause(a) of paragraph A of section 78 to a Labour Court Clause (a) of paragraph A of section 78 speaks of disputes regarding

(i) the propriety or legality of an order passed by an employer under the standing orders;

(ii) the application and interpretation of standing orders;

(iii) any change..... desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out

of such change.

Sub-clauses (i) and (ii) of clause (a), quoted above will not be attracted in this case. In view of the decision in Digambar's case, it would not be possible to maintain that there can be scope for a dispute regarding the propriety or legality of an order passed by the employer under the present standing order, which is quite clear in terms and which has been held to mean that no compensation is payable to any of the workers in respect of stoppage due to the causes mentioned there in, which includes the stoppage of power supply. For the same reason, it will not be possible to contend that there is any scope for dispute regarding the application and interpretation of these standing orders It is, however, possible to say that this is a dispute regarding a change desired by an employe in respect of an industrial matter specified in Schedulte III viz. "Payment of compensation for closures"-and matters, arising out of such chang An employee seeking to make a move in this direction would be governed by the precedure laid down in section 42. But sub-section (2) of section 40 authorises the Provincial Government to make a reference to a Labour Court provided the dispu-e is of that particular character. If there is material to show that there is a dispute regardi ng a change in the standing orders because of the desire of the employee to claim compensation in respect of closures, it would be possible for Government to refer the dispute to the Labour Court under the provisions of section 40(2).

Secondly a reference can also be made under section 73, which is a new section, and t opening

words of which show that such reference is permissible notwithstanding anything contai ned in the Act. This is a special power given to Government to be exercised in spec ial circumstances which are enumerat -ed in sub-section (1) of section 73. If Government feels satisfied of these circumst ances, it would be competent to Government to make a reference under section 73 also, notwithstanding the standing orders and their ordinary effect as described in sub-section (1) pf section 40.

I.G./P.M.L. 16/8
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U.O. to L.A. H.D.No. 13393 dated the 16th August1952.

SMR 13-8-52
4 Copies.

The chances of success in view of the discussion of law in the note recorded by Minister for Labour have already been considered in B.L.A.'s opinion and the view has been expressed that Nigamber's case will not come in the way of a reference being successfully made, provided the requirements of sections 40(2) or 73 are satisfied. Whether they are so satisfied in fact must be left to the determination of the Administrative Department.

In regard to the chances of success on merits, attention is invited to the principle laid down in the case of the Textile Labour Association vs. the Ahmedabad Millowners Association, Lab.Gazette, July 1947, p. 887, viz: "However, any party wishing to make out a case for compensation in spite of the provisions of Standing Order No. 16, has to make out a very strong case. As long as the Standing Orders Nos. 16 and 17 are there they cannot be rendered obsolete by giving workers as compensation which they cannot get as wages, irrespective of any other consideration". (See also Surat Cotton and Spg. & Mfg. Mills Ltd. v. Its Employees, Industrial Court Reporter, 1946-47, p. 333 and Silver Cotton Mills Coy. Ltd. v. Textile Labour Association, Industrial Court Reporter, 1949, p. 748). In the present case, the closure was beyond the control of the Millowners; besides the closure does not appear to be for more than 5 days in a month during the closure period of seven months.

However, the fact that the Millowners were themselves prepared to pay to the extent of 25% will have to be taken into account. In view of that fact, the dispute will have to be confined to the question of quantum only, and the Administrative Department may consider whether there is matrial to persuade the Court to award more than 25%.

Id./P.M.L. 4/9

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U.O. to L.& H.D. No. 876-Confl, dated the 4th September 1952.

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